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March 23, 2007



Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

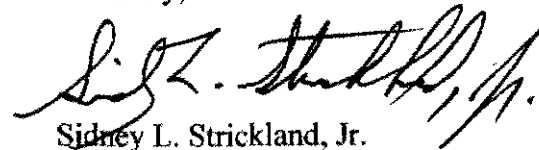
**Re: Surface Transportation Board Finance Docket No. 34979,
BNSF Railway Company – Trackage Rights Exemption –
Grand Trunk Western Incorporated**

Dear Secretary Williams:

Enclosed for filing in the above referenced docket are an original and ten copies of a
Reply to "Protest."

Please acknowledge receipt of this material by date stamping the enclosed copy of this
letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,


Sidney L. Strickland, Jr.

SLS/cac
Encs.

cc: John Sims
J.M. Karakian
Ted Kalick

ENTERED
Office of Proceedings

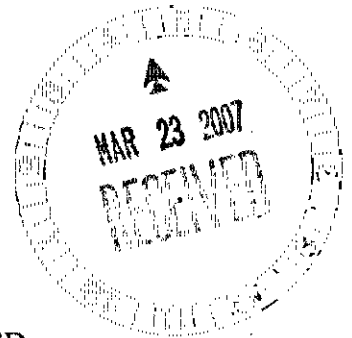
MAR 23 2007

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34979

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD INCORPORATED



REPLY TO PROTEST

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ATTORNEYS FOR
BNSF RAILWAY COMPANY

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Dated: March 23, 2007

BEFORE THE
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STB Finance Docket No. 34979

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD INCORPORATED

REPLY TO PROTEST

BNSF Railway Company (“BNSF”) hereby replies in opposition to the “Protest” filed on March 5, 2007, by J. M. Karakian (“Protestant”), for and on behalf of the Brotherhood of Locomotive Engineers & Trainmen-General Committee of Adjustment-Grand Trunk Western Railroad (“BLET”).

BACKGROUND

On January 30, 2007, BNSF filed its Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), to permit BNSF to acquire overhead trackage rights over a 2.4 mile rail line owned by Grand Trunk Western Railroad Incorporated d/b/a Canadian National Railway Company (“CN”) located between CN’s Connection with Norfolk Southern Corporation (“NS”) trackage at or about CN’s Milepost 8.5 and CN’s connection with NS at the west end of CN’s Fence Track at or about CN’s Milepost 6.1, all on CN’s Elson Subdivision, all within the State of Illinois. The Notice was published

in the Federal Register on February 15, 2007. The exemption became effective on March 1, 2007.¹

On March 5, 2007, BLET filed its Protest with the STB.

REPLY

BLET protests STB approval of the subject trackage rights exemption, speculating the transaction could allow BNSF or NS to capture work of GTW/Elsdon Assignment #510. Protest at 2.

Petitioner essentially seeks revocation of the Notice. However, BLET fails to substantiate any claim that would merit revocation of the Notice. The gravamen of BLET's protest is the supposition that the Notice may permit BNSF or NS to "capture" the work of the GTW/Elsdon Assignment #510. As noted more fully below, BLET's suppositions are insufficient to revoke the Notice.

Under 49 U.S.C. 10502(d), the Board may revoke an exemption if regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101 ("RTP"). To obtain a revocation, the moving party must demonstrate that greater regulatory scrutiny is necessary to carry out the RTP. Petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. *Nevada Pacific Railroad Corporation--Lease and Operation Exemption--Rail Lines of Pan Western Corporation*, Finance Docket 34958 (STB served March 15, 2007); *Minnesota*

¹ Applicants were agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to *Norfolk and Western Ry. Co.--Trackage Rights--BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.--Lease and Operate*, 360 I.C.C. 653 (1980). The Federal Register notes the imposition of this condition.

Comm. Ry., Inc.--Trackage Exempt.--BN RR. Co., 8 I.C.C.2d 31 (1991) (Minnesota); Portland & Western Railroad, Inc. – Lease and Operation Exemption – Lines of Burlington Northern Railroad Company (not printed), (STB served, October 15, 1997); and, Wisconsin Central Ltd.--Exemption Acquisition and Operation--Certain Lines of Soo Line Railroad Company, Finance Docket No. 31102 (ICC served July 28, 1988).

The party seeking revocation of an exemption has the burden of proving that the regulation of the transaction is necessary. *Id.* Here, BLET has come forward with unsupported suppositions. BLET provides no information to revoke the Notice, nor does BLET show that the transaction is contrary to the RTP. Indeed, BLET presents only speculation. BLET specifically acknowledges in its filing:

Even though we know absolutely nothing about the business plans of the mentioned railroads (BNSF & NS) in the proposed area, we can't really see the attached finance being used by these railroad companies to go after a couple of industries served by GTW Assignment #510.

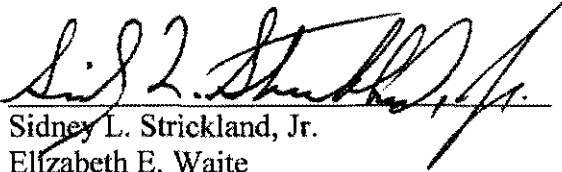
Protest at 2.

In sum, BLET merely speculates that BNSF or NS seeks to capture the work of the Grand Trunk Western/Elsdon Assignment #510. BLET fails to meet its burden of proof.

CONCLUSION

BLET fails to meet its burden of proof, and the Board should deny BLET's Protest.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sidney L. Strickland, Jr.", is written over a horizontal line.

Sidney L. Strickland, Jr.

Elizabeth E. Waite

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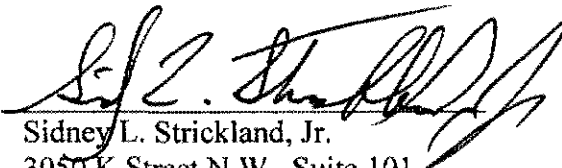
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ATTORNEYS FOR BNSF RAILWAY COMPANY

CERTIFICATE OF SERVICE

BNSF Railway Co. ("BNSF") by and through its authorized counsel, certifies that on March 23, 2007, BNSF sent copies of the foregoing Reply to Protest, by facsimile transmission and by mailing copies thereof by first-class-mail to: J.M. Karakian, 43422 West Oaks Drive, PMB 337, Novi, MI 48377-3300.



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BNSF RAILWAY